

CLD-356

August 23, 2007

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **07-1757**

DERRICK L. JOHNSON

VS.

WARDEN THOMAS CARROLL, ET AL.

(D. DEL. CIV. NO. 07-CV-00011-SLR)

Present: RENDELL, SMITH AND JORDAN, CIRCUIT JUDGES

Submitted is Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1)

in the above-captioned case.

Respectfully,

Clerk

MMW/MCF/isc

ORDER

The foregoing request for a certificate of appealability is denied. See 28 U.S.C. § 2253(c)(2). Johnson's habeas petition challenging the administration of his sentence is not a second or successive petition such that the gatekeeping provisions of 28 U.S.C. § 2244 apply. See Benchoff v. Colleran, 404 F.3d 812, 817 (3d Cir. 2005). However, Johnson has not made a substantial showing of the denial of a constitutional right. Jurists of reason would not debate that the petition fails to state a valid claim of the denial of a constitutional right. See Slack v McDaniel, 529 U.S. 473, 484 (2000). Johnson has not shown that the application of Evans v. State, 872 A.2d 539 (Del. 2005), to his case deprived him of any constitutional right.

By the Court,

/s/ Kent A. Jordan
Circuit Judge



Marcia M. Waldron

Marcia M. Waldron, Clerk

Dated: September 21, 2007
ISC/cc: Derrick L. Johnson
Loren C. Meyers, Esq.